97TH CONGRESS
2d Session

SENATE

TREATY DOC.
No. 97-24

AGREEMENT WITH THE PEOPLE'S REPUBLIC OF CHINA WITH RESPECT TO MUTUAL EXEMPTION FROM TAXATION OF TRANSPORTATION INCOME OF SHIPPING AND AIR TRANSPORT ENTERPRISES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA WITH RESPECT TO MUTUAL EXEMPTION FROM TAXATION OF TRANSPORTATION INCOME OF SHIPPING AND AIR TRANSPORT ENTERPRISES, SIGNED AT BEIJING ON MARCH 5, 1982

JUNE 16, 1982.—Agreement was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1982

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 16, 1982.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, an Agreement between the Government of the United States of America and the Government of the People's Republic of China with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises, signed at Beijing on March 5, 1982. I also transmit the report of the Department of State on the Agreement.

Under the Agreement, United States enterprises will be exempt from Chinese income taxes and Chinese enterprises will be exempt from United States Federal income tax on income derived from the operation of ships and aircraft in international traffic. The exempt income includes income from the leasing of ships, aircraft and containers used in international traffic.

As with other treaties of this kind, the provisions of the Agreement do not affect the United States taxation of residents and citizens of the United States, or China's taxation of its residents and citizens.

I recommend that the Senate give early and favorable consideration to the Agreement and give advice and consent to its ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., June 2, 1982.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Agreement between the Government of the United States of America and the Government of the People's Republic of China with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises, signed at Beijing on March 5, 1982.

The Agreement expands the scope of an exchange of notes between the United States and the People's Republic of China, signed at Beijing on November 18, 1981, providing reciprocal exemption of international shipping income.

The Agreement is based on provisions in the United States model income tax convention concerning the taxation of international shipping and aircraft operations. The reciprocal exemption provided in the Agreement does not depend on where the ship or aircraft is documented or registered. An enterprise of either country operating ships or aircraft in international traffic would be exempt from tax by the other country on its income from those operations without regard to where the ship or aircraft was documented or registered.

The taxes covered by the Agreement are taxes imposed by the People's Republic of China on the transportation income of shipping and air transport enterprises, including any surcharges on behalf of local governments, and the United States Federal income tax. It is understood that if any state or locality of the United States imposes a tax on the earnings of Chinese enterprises from the operation of ships and aircraft in international traffic, the People's Republic of China may impose any local surcharge applicable to the earnings of United States enterprises from similar activities.

The income exempted by the Agreement is income from the operation of ships and aircraft in international traffic, the rental of ships and aircraft used by the lessee in international traffic, the rental of ships and aircraft which is incidental to income from operating ships and aircraft in international traffic, the rental or use of containers in international traffic, and gains on the alienation of ships, aircraft and containers used in international traffic. The Agreement also exempts from Chinese income tax the salaries of crew members of ships and aircraft operated in international traffic who are residents of the United States and reciprocally exempts from United States Federal income tax the salaries of crew members of ships and aircraft operat-

ing in international traffic who are residents of China. Each State, however, reserves the right to tax its residents and citizens according to its internal law.

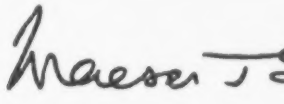
The Agreement defines the terms "international traffic" and "enterprise" and it provides that the competent authorities will seek to resolve any difficulties arising in interpreting or applying the Agreement.

The Agreement provides that the Contracting States shall notify each other in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring the Agreement into force. The Agreement will enter into force on the date of the later of such notifications and its provisions will take effect retroactively as of January 1, 1981.

A technical memorandum explaining in detail the provisions of the Agreement is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Agreement. It has the approval of both Departments.

Respectfully submitted,



AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA WITH RESPECT TO MUTUAL EXEMPTION FROM TAXATION OF TRANSPORTATION INCOME OF SHIPPING AND AIR TRANSPORT ENTERPRISES

The Government of the United States of America and the Government of the People's Republic of China have agreed as follows, with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises:

ARTICLE I

Income and profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

ARTICLE II

1. The term income and profits from the operation of ships and aircraft includes:

(a) Income and profits from the operation of passenger, cargo, or mail transportation service by the owner or charterer of a ship or aircraft, and the sale of tickets related to such transportation;

(b) income and profits from the rental of ships or aircraft which are operated in international traffic by the lessee;

(c) income and profits from the rental of ships or aircraft if such rental is incidental to the operation of ships or aircraft in international traffic; and

(d) income and profits from the rental or use of containers (and related equipment for the transport of containers) used in international traffic.

The income and profits referred to in (a) through (d) above are, in each case, derived by an enterprise of a Contracting State.

2. The term international traffic means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State.

ARTICLE III

Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated in international traffic shall be taxable only in that State.

ARTICLE IV

1. The term enterprise means:

(a) A state-owned or collectively-owned enterprise of, and an enterprise carried on by a resident of, the People's Republic of China; and

(b) an enterprise carried on by a company incorporated in the United States of America and an enterprise carried on by a resident of the United States of America.

2. The term enterprise also includes a participation in a partnership or joint business by an enterprise referred to in paragraph 1.

ARTICLE V

Salaries and other remuneration derived by a resident of a Contracting State employed as a member of the crew of a ship or aircraft operated in international traffic shall be exempt from tax in the other Contracting State.

ARTICLE VI

The competent authorities of the Contracting State shall seek to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

ARTICLE VII

Nothing in this Agreement prevents a Contracting State from taxing its residents and citizens.

ARTICLE VIII

Each of the Contracting States shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Agreement into force. The Agreement shall enter into force on the date of the later of such notifications and the provisions shall take effect on January 1, 1981.

ARTICLE IX

This Agreement shall remain in force indefinitely. However, either Contracting State may terminate the Agreement by giving six months prior notice to the other Contracting State, through diplomatic channels, in which case the Agreement shall cease to have effect as of January 1 following the expiration of the six months period.

Done at Beijing this fifth day of March, 1982, in duplicate, in the English and Chinese languages, the two language texts having equal authenticity.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Arthur W. Hummel Jr

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

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